

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 1132**  
92ND GENERAL ASSEMBLY

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Reported from the Committee on Commerce and the Environment, April 8, 2004, with recommendation that the Senate Committee Substitute do pass.

3582S.08C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal section 386.390, RSMo, and to enact in lieu thereof three new sections relating to predetermination of prudence and ratemaking principles for infrastructure investments by electric, gas, and water utilities.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 386.390, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 386.376, 386.390, and 393.156, to read as follows:

**386.376. Notwithstanding any other provisions of this chapter or any law to the contrary, the public service commission may approve upon the terms and conditions in an application, tariff, or settlement agreement, programs for assisting low-income residential ratepayers in obtaining or maintaining access to reliable, continuous utility service to such low-income utility customers. The commission may also approve energy efficiency, weatherization, and evaluation components as part of such programs. Nothing in this section shall be construed as diminishing the commission's existing authority to approve on an experimental basis low-income assistance programs proposed by an electric or gas corporation.**

386.390. 1. Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission; provided, that no

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five **residential** consumers or purchasers[, or prospective consumers or purchasers,] **or five large industrial customers** of such gas, electricity, water, sewer, or telephone service. **For the purposes of this section, the term "large industrial customer" means any customer using more than ten million kilowatt hours of electricity per year.**

2. All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties; and in any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided.

3. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant. Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the public utility, corporation or person complained of.

4. Service in all hearings, investigations and proceedings pending before the commission may be made upon any person upon whom summons may be served in accordance with the provisions of the code of civil procedure of this state, and may be made personally or by mailing in a sealed envelope with postage prepaid.

5. The commission shall fix the time when and the place where a hearing will be had upon the complaint and shall serve notice thereof, not less than ten days before the time set for such hearing, unless the commission shall find that the public necessity requires that such hearing be held at an earlier date.

6. **Any overearnings complaints heard by the commission shall be decided within eleven months.**

7. **Upon a finding that the corporation has overearned, the commission may order refunds with interest from the date of the filing of an earnings complaint to all affected customers.**

**393.156. 1. Any electrical corporation proposing to construct, lease, or invest more than ten percent of its net utility plant as stated in the utility's annual report to the Missouri public service commission in any new generation plant may file with the commission an application requesting a determination of prudence of the decision to construct, lease, or invest in such infrastructure based upon the circumstances prevailing and information and alternatives presented at the time**

of the determination. Any electrical corporation proposing to enter into a contract for the purchase of power and energy that has a contract term longer than five years, or any gas corporation proposing to construct, lease, or invest in any new facilities for the storage or transportation of natural gas or proposing to enter into multi-year hedging, gas supply, or transportation arrangements for natural gas to be supplied to its Missouri retail jurisdictional customers or any water corporation proposing to construct, lease, or invest in any new water treatment facilities, may also file with the commission an application requesting a determination of prudence of the decision to enter into such contract, multi-year hedging, gas supply or transportation arrangements for natural gas based on the circumstances prevailing and information and alternatives presented at the time of the determination; however, the commission may in its discretion decline to consider such application. As part of its application, the corporation may also request that the commission determine certain ratemaking principles that will be applied to the investment or cost of such infrastructure in future proceedings before the commission. The application may include, at the option of the corporation, a request for a certificate of convenience and necessity under section 393.170, if necessary. At the time the application is filed, the corporation shall file all evidence supporting its proposed course of action, including testimony, exhibits, work papers, and studies, including electronic versions of all models used. The corporation shall also file proposed confidentiality agreements, including any required by third-party vendors, and identify all material for which a need for confidentiality is asserted. If any proposed generation facility is not to be located within the state of Missouri or if any proposed contract for power and energy is not with an entity owning generation facilities within the state of Missouri, in addition to evidence that the project itself is reasonable and prudent, the corporation shall submit evidence that the location of the facility or the contract is in the best interest of Missouri ratepayers of the corporation.

2. The commission shall establish guidelines for the submission of the application by the corporation. The commission shall conduct a hearing and issue an order within one hundred and eighty days after the filing of the application in accordance with any guidelines established by the commission, unless the application concerns a contract for the purchase of power and energy, multi-year hedging, gas supply or transportation arrangements, in which case the commission may in its discretion decline to consider the application. The commission may approve the application as proposed by the corporation, approve the application on the basis of conditions required to be accepted by the corporation, or may reject the application or, if the application concerns a contract for the purchase

of power and energy, multi-year hedging, gas supply or transportation arrangements, decline to consider the application. If, after hearing, the commission determines that the decision to construct, lease, or invest in such infrastructure, or to enter into such purchase contract is reasonable and prudent, the commission shall issue an order and certificate so stating and addressing, whether by approving, modifying, or rejecting, each ratemaking principle raised in the hearing. If the application concerns any contract for the purchase of power and energy, multi-year hedging, gas supply, or transportation arrangements, the commission may in its discretion issue an order and certificate so stating and addressing, whether by approving, modifying, or rejecting each ratemaking principle raised in the hearing. The commission may impose conditions on the certificate requiring the corporation to monitor, and to report to the commission on a specified schedule, any significant changes in specified costs, load, regulatory, economic, or other assumptions upon which the decision was based. Costs will be included in rates of the corporation only in accordance with the existing law, except as otherwise provided in subsection 6 of this section. Nothing in this section alters the authority or procedures of the commission in setting the rates of the corporation, or to review the prudence of construction management.

3. The order by the commission approving, modifying, or rejecting the determination of prudence and addressing ratemaking principles will be applied in any future rate case to the investment and costs of the facility or contract and shall be binding for ratemaking purposes in all future proceedings. Ratemaking principles may include, but are not limited to, authorized return on equity, capital structure to finance the facility, estimated service life, depreciation rate for cost of service purposes, jurisdictional allocation method to be applied to the cost, and in-service criteria used to determine when a facility is fully operational and used for service consistent with section 393.135.

4. If the commission fails to issue an order determining the prudence of the proposal within one hundred eighty days after the application is filed in accordance with the guidelines established by the commission, the project or contract is deemed to be prudent as proposed, any certificate for convenience and necessity requested by the corporation in the application shall be deemed approved by the commission.

5. The corporation shall have two hundred seventy days after the effective date of an order determining a project or contract to be prudent to notify the commission whether it will construct the facility or enter into the proposed contract. If the corporation notifies the commission it will not proceed with construction of the facility or will not enter into the contract, any ratemaking

principles included in the order will be of no further force and effect and there shall be no adverse presumption applied to the corporation in any future proceeding before the commission based on the decision by the commission or the decision of the corporation not to proceed under the order.

6. The corporation shall report to the commission at the times specified in the order of the commission, or upon the occurrence of any significant unusual event such as an act of God, a significant change in federal or state environmental or utility law or regulation, or other significant events which may individually or collectively, materially, and adversely affect the project or contract for which a certificate has been issued. At the time of any such report, the corporation may request the commission to consider a modification or termination of the project or contract, or the commission on its own motion may require the corporation to present evidence supporting a decision to continue a project or contract for which a certificate has been issued. In the event the commission, after hearing, determines that continuation of a project or contract is no longer prudent, or should be modified, the corporation shall be allowed to recover in rates, in a timely manner, consistent with financial obligations of the corporation, the amounts already expended, incurred, or obligated on such project or contract including, if applicable, capitalized, net of income taxes, interest expense, and a capitalized return on equity invested in the project up to the time the order is entered even though the project may never be fully operational or used for service. These costs will be amortized to expenses and recovered in rates, over a period of years and in a manner to be determined by the commission at the time the application is initially approved or when the order to modify or terminate the project is issued.

7. No corporation shall file more than one application covering more than one project or arrangement to meet a specific need under this section in any twelve-month period; provided however, if an application is dismissed or denied or the corporation notifies the commission it will not proceed under an approved application, the corporation may file a new application for the same or an alternate facility or contract at any time. The commission may waive this limitation when it deems a waiver to be in the public interest.

8. Nothing in this section shall excuse a corporation from complying with its public service obligation to provide safe and adequate service at just and reasonable rates.